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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 PAULINE HAYES,

12 Petitioner,

13 v.

14 KIMBERLY HUGHES, Warden,

15 Respondent.
16

Case No. CV 15-10006 SJO (AFM)

**ORDER ACCEPTING FINDINGS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE**

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18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, records on
19 file and the Report and Recommendation of United States Magistrate Judge.
20 Further, the Court has engaged in a *de novo* review of those portions of the Report
21 to which respondent has made objections.

22 Respondent objects that petitioner's claims are barred by *Teague v. Lane*,
23 489 U.S. 288 (1989). However, respondent did not properly address the substance
24 of petitioner's claims.

25 In Ground One, petitioner claimed that she was subject to an illegal sentence
26 enhancement based on her prior convictions, and that she was mentally incompetent
27 when she committed the crimes and when she entered her plea. (Petition at 3.)
28 Respondent contends that granting relief for this claim would require "a new rule of

1 constitutional law be announced contrary to the rule” of *Tollett v. Henderson*, 411
2 U.S. 258 (1973). This articulation of the supposed new rule is too vague to satisfy
3 respondent’s burden to raise a proper *Teague* argument, and it does not properly
4 account for petitioner’s claim of sentencing error. Moreover, *Tollett* does not
5 preclude a challenge to the voluntary and intelligent nature of a plea. After
6 construing petitioner’s allegation liberally (as federal habeas courts are required to
7 do), the Court has determined that petitioner was trying to claim that her alleged
8 mental incompetency rendered her plea involuntary. Such a claim, if it warranted
9 habeas relief (which it does not in this case), would not have been “contrary to the
10 rule of *Tollett*.” See *Miles v. Stainer*, 108 F.3d 1108, 1112 (9th Cir. 1997) (mental
11 incompetency at time of plea hearing would render guilty plea invalid).

12 In Ground Two, petitioner claimed that her sentence is illegal because her
13 prior convictions did not involve weapons or harm to the victims, and they were
14 remote in time. Respondent contends that granting relief for this claim would
15 require a new rule under *Teague* that the principles of double jeopardy are not
16 violated when sentence enhancements are imposed for prior serious felony
17 convictions. Although petitioner made a passing reference to the concept of
18 “double jeopardy,” this was not the substance of her sentencing-error claim.
19 Rather, petitioner argued that her sentence enhancement was illegal because her
20 prior convictions had not been proven as facts, she had not harmed anybody, she
21 had not used weapons, and her prior convictions were remote in time. These
22 arguments were meritless for reasons having nothing to do with double jeopardy or
23 *Teague*: Claims of error under state sentencing laws are not cognizable on federal
24 habeas review, and the record reflected that petitioner validly admitted the truth of
25 her prior convictions in open court.

26 In sum, respondent has not properly raised a *Teague* argument.

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1 IT THEREFORE IS ORDERED that (1) the Report and Recommendation of
2 the Magistrate Judge is accepted and adopted; (2) respondent's Motion to Dismiss
3 based on a *Teague* argument is denied; and (3) judgment shall be entered
4 dismissing this action with prejudice.

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6 DATED: July 17, 2016.

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S. JAMES OTERO
UNITED STATES DISTRICT JUDGE